

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

GREGORY RAYMOND KELLEY,
Plaintiff

v.

**CITY OF CEDAR PARK, SEAN
MANNIX, and CHRISTOPHER
DAILEY,**
Defendants

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Case No. 1:20-CV-481-RP

ORDER

Before the Court are Plaintiff's Motion to Compel Responses to Requests for Production from Defendant City of Cedar Park, filed April 22, 2022 (Dkt. 82); Defendant City of Cedar Park's Response to Plaintiff's Motion to Compel, filed April 29, 2022 (Dkt. 84); and Plaintiff's Reply, filed May 6, 2022 (Dkt. 85).¹ In his Motion, Plaintiff Gregory Kelley asks the Court to compel Defendant City of Cedar Park (the "City") to respond to 28 of his requests for production.

The City served responses and objections to Kelley's requests for production on January 11, 2021, and discovery closed on February 13, 2022. Dkt. 82-1; text order entered October 29, 2021. The City argues that the Court should deny the Motion because it was filed more than two months after the discovery period expired and therefore is untimely.

Local Rule CV-16(e) provides, in pertinent part: "Absent exceptional circumstances, no motions relating to discovery . . . shall be filed after the expiration of the discovery deadline, unless than are filed within 14 days after the discovery deadline and pertain to conduct occurring during

¹ On May 2, 2022, the District Court referred Plaintiff's Motion to Compel to the undersigned Magistrate Judge for disposition, pursuant to 28 U.S.C. § 636(b)(1)(A), Federal Rule of Civil Procedure 72, and Rule 1(c) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas ("Local Rules").

the final 7 days of discovery.” Accordingly, Kelley’s Motion to Compel must be denied as untimely unless he established exceptional circumstances.

The Court finds in its discretion that Kelley has shown exceptional circumstances for filing his Motion to Compel more than 14 days after the discovery deadline. Circumstances supporting this finding include that one of Kelley’s original attorneys has experienced health issues, and Kelley recently retained additional counsel who required time to review “the voluminous underlying criminal and habeas records” in his case. Dkt. 85 at 4; *see also* Dkt. 69. Trial is not set until November 14, 2022. Dkt. 74. In addition, the City has not yet answered Kelley’s complaint, and the parties continue to engage in depositions and other discovery. Dkt. 85 at 5. Finally, Kelley contends that his counsel recently became aware of relevant documents allegedly missing from the City’s production. *See, e.g.*, Dkt. 85 at 2. The Court finds Kelley’s showing sufficient to establish exceptional circumstances pursuant to Local Rule CV-16(e). *See Steward ex rel. Minor v. Smith*, Nov. SA-10-CA-1025-OG, 2018 WL 11361752, at *1 (W.D. Tex. July 24, 2018) (finding that delay in filing motion to compel should not preclude its consideration where document production lasted for years and motion was filed more than four months before trial).

For the foregoing reasons, the parties are hereby **ORDERED** to appear for a hearing on the merits of Plaintiff’s Motion to Compel Responses to Requests for Production from Defendant City of Cedar Park (Dkt. 82) at **10:00 a.m. on Friday, May 13, 2022** in Courtroom Six on the Sixth Floor of the United States Courthouse, 501 West Fifth Street, Austin, Texas 78701.

SIGNED on May 10, 2022.



SUSAN HIGHTOWER
UNITED STATES MAGISTRATE JUDGE